IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 210 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESH G BENDBAR

Versus

SURDAS G CHELANI

Appearance:

MR PRANAV G DESAI for Petitioner

MR RN SHAH for Respondent No. 3

Mr. U.R. Bhatt, APP, for the State

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 17/02/2001

ORAL JUDGEMENT

1. Food Inspector, Vadodara Municipal Corporation (original complainant), by filing this appeal, has challenged the judgment order dated December 17, 1990 passed by the learned Judicial Magistrate, First Class,

(Municipal), Vadodara, in Criminal Case No.1844 of 1983, by which judgment, the learned Magistrate acquitted respondents Nos.1, 2 and 3 from the charges framed against them under Sections 7, 16, 19 and 20(A) of the Prevention of the Food Adulteration Act, 1954 ('Act' for short).

2. The prosecution case, in short, be summarized as under: Complainant, R.G. Bandbar, was appointed as Food Inspector in the area covered under the municipal limits of Vadodara. On February 4, 1983, at 11 a.m., the complainant along with his staff members went to the shop of Raghuvir Masala Mill. At that time, respondent No.1, who was in charge of the administration of the shop, was present. The complainant, in presence of a panch, collected sample of 600 grams of gram-flour (besan) by paying the price. The said quantity of gram-flour was divided into three parts and each part was filled in clean and dry bottles and, after following the usual procedure under the Act, the said three sample bottles were sealed and seized under a panchanama. One sample bottle was sent to the Public Analyst, Gandhinagar, for analysis. As per the report of the Public Analyst, the sample of gram-flour did not conform to the standard prescribed under the Act. The report of the Public Analyst was sent to the respondent No.1 as per the provision of Section 13(2) of the Act. The complainant, on enquiry, learnt that respondent No.1 had purchased gram-flour from respondent No.2 and respondent No.2 had purchased the said article from respondent No.3, Navjivan Flour Mills, who was the manufacturer. Accordingly, the complainant lodged a complaint against all the three respondents for the offences punishable under Sections 7,16, 19 and 20(A) of the Act in the Court of learned Judicial Magistrate, First Class (Municipal), Vadodara, which came to be numbered as Criminal case No.1844 of 1983.

3. The complainant was examined at Exh.30. After the examination of the complainant, charge Exh.84 was framed against the respondents for the abovementioned offences. The charge was read over and explained to the respondents wherein they had pleaded not guilty and claimed to be tried. To prove the charge against respondents Nos.1, 2 and 3, one Arjunlal Balchand, who was panch at the time of search and seizure of the shop of respondent No.1, was examined at Exh.94. The complainant produced voluminous documentary evidence consisting of complaint, panchanama, report of the Public Analyst, etc. to prove the charges against the respondents.

4. The learned Magistrate, on appreciation of oral and documentary evidence, concluded that (i) sanction to prosecute the respondents granted under Section 20 of the Act was not legal and valid; (ii) there was breach of Rules 15 and 16(c) of the Prevention of the Food Adulteration Rules, 1955 ('Rules' for short), inasmuch as the name of Local Health Authority was not mentioned on the sample bottles and the said bottles were not sealed as per the provisions of the Rules; (iii) the prosecution has not established that respondents Nos.2 and 3 were warrantors as per the case of respondent No.1 and, therefore, respondents Nos 2 and 3 were entitled to be acquitted. On the basis of the abovereferred to conclusion, the learned Magistrate acquitted the respondents Nos.1, 2 and 3 from the charges framed against them, which has given rise to filing of this appeal by the complainant.

5. Learned advocate, Mr. Pranav G. Desai for the appellant, learned advocate Mr. R.N. Shah, for respondents Nos.1 to 3 and learned Additional Public Prosecutor, Mr.U.R.Bhatt have taken me through the entire record and proceedings produced at the trial.

6. Learned advocate Mr. P.G. Desai for the appellant has strenuously urged that the sanction to launch the prosecution against the respondents accorded by the Local Authority was legal and valid as per decision of the Supreme Court in the case of Suresh H. Rajpur & others vs. Bhartiben Pravinbhai Soni & others, reported in (1996) 7 Supreme Court Cases p.199. The learned advocate for the respondents does not dispute this legal position and, therefore, the finding of the learned Magistrate that there was no valid sanction deserves to be quashed and set aside.

7. However, the acquittal of the respondents on the ground that there was breach of Rules 15 and 16(c) of the Rules deserves to be confirmed. The evidence of the complainant did not establish that he had followed the requirements of Rules 15 and 16 of the Rules. No evidence was led to establish that the sample bottles were labelled and addressed properly inasmuch as code number and serial number of the Local Health Authority were not mentioned. The name of the sender and his official designation were also not affixed on the said sample bottles. The evidence of the complainant also did not indicate that the sample bottles were packed, fastened and sealed as per Rule 16(c) of the Rules. In view of the lacuna in the evidence of the complainant, in

my view, the finding of the learned Magistrate that there was breach of Rules 15 and 16(c) of the Rules deserves to be confirmed. It may also be mentioned that there was also breach of Rule 14 of the Rules, as the complainant had not led sufficient evidence to establish that the gram-flour was filled in clean and dry bottles.

8. The finding of the learned Magistrate that no case was proved by the prosecution against respondents nos.2 and 3 as seller and manufacturer of gram-flour, deserves to be confirmed. The complainant has led no evidence to prove that respondent No.1 had purchased gram-flour from respondent No.2 who in turn had purchased it from the manufacturer, namely, respondent No.3. No documentary evidence was produced to prove the case of the prosecution that respondent No.3 was manufacturing gram-flour, from whom respondent No.2 had purchased and sold it to respondent No.1. In view of paucity of evidence against respondents Nos.2 and 3, the learned Magistrate was justified in acquitting them.

9. As a result of foregoing discussion, the appeal fails and is dismissed. The order of acquittal dated December 17, 1990 passed by the learned Judicial Magistrate, First Class, (Municipal), Vadodara, in Criminal Case No.1844 of 1983, is confirmed. The muddamal be destroyed as per the direction of the learned Magistrate in the impugned judgment and order.

February 17, 2001 (M.H.Kadri, J.)
(swamy)